liable for that act in the same manner as if the act were done by him alone.

A reading of s 394 of the Code will show that it deals with the group liability of robbers one or more of whose number causes or cause hurt. Under it the guilty act of a robber who causes hurt in committing the robbery is imported to all the others who are 'jointly concerned' in the commission of the robbery. Such hurt must be caused voluntarily for the end of the robbery. The section obviously refers to two distinct classes of persons: (a) those who cause the hurt, and (b) those who do not, but are 'jointly concerned' in the commission of the robbery. It should also be noted that s 394 does not in terms provide that all the robbers must have committed the robbery 'in furtherance of the common intention of them all'. In connection with the phrase 'jointly concerned' in s 394 of the Code, counsel for the applicant submitted that group criminal liability attaches to a person for the act of another under the Code in *only* three situations. He spelt out the three situations as follows:

(i) where the other person did the act in furtherance of a common intention between them within the meaning of s 34 of the Code;
(ii) where the person is a member of an unlawful assembly along with the other person and the other person did the act in pursuance of a common object of the unlawful assembly within the meaning of s 149 of the Code; and
(iii) where the law has imposed an absolute prohibition on the doing of something and strict criminal liability is attached as, for example, where a licence holder is liable for the acts of his servants or agents.

It will be seen at once that the submission of counsel for the applicant did not deal with the joint criminal liability of persons who have done one of several acts constituting an offence as provided by s 37 of the Code. Section 37 of the Code reads: 'When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.' Such a person made liable under s 37 of the Code, in our view, is a person 'jointly concerned' with the commission of robbery if it is an offence under s 394 of the Code.

Two cases have, in our view, provided the answer to the question posed for our consideration. In *R* v *Yeo Kim Watt & Anor*,[1] Willan CJ, in delivering the judgment of the Court of Criminal Appeal, referred to s 394 of the Code and said at p 158 as follows: '... As to this, we would first point out that there is no need to have recourse to s 34 when considering s 394 ... .'

The other case is *Wong Kim Wah* v *PP*[2] which dealt with a gang robbery with murder under s 396 of the Code. Spenser Wilkinson J in delivering the judgment of the Court of Appeal (Criminal) stated at p 134 as follows: 'It is in our view settled law in this country that proof of common intention is not necessary upon a charge under s 396 of the Code.'

It is right to observe that the two cases did not directly deal with s 394 of the Code but we are of the opinion that the same principles of statutory interpretation apply to s 394.

Order accordingly.

Solicitors: *JB Jeyaretnam & Co.*

Reported by *Terence Tan Bian Chye*

Lee Kuan Yew v Jeyaretnam Joshua Benjamin

HIGH COURT (SINGAPORE) — SUIT NO 1754 OF 1988
LAI KEW CHAI J
3 AUGUST 1990

Tort — Defamation — Fair comment — Constitutional privilege — Factors in assessing damages — Constitution of the Republic of Singapore, art 14

The plaintiff was the Prime Minister of Singapore for the relevant period. At the 1988 general elections, the defendant, who was not himself a candidate, ran the election campaign for the Workers' Party, an opposition party, and spoke in their election rallies. At one of these rallies on 26 August 1988 ('the rally'), the defendant made statements referring to the suicide of Mr Teh Cheang Wan, then the Minister for National Development ('the speech'). The plaintiff contended that by those statements, the defendant had imputed that the plaintiff was unfit for the office of Prime Minister in that he had advised Mr Teh to commit suicide in order that the latter could avoid investigations into his conduct and thereby escape responsibility, and that he was guilty of criminal misconduct in that he abetted Mr Teh's suicide. In this action for defamation, started in respect of the speech, the defendant pleaded the defence of fair comment and constitutional privilege. The last defence was based on an American doctrine that a defendant who unwittingly defamed a politician or public figure would not be liable unless the plaintiff proved actual malice.

Held, giving judgment to the plaintiff:

(1) The court first had to ascertain the natural and ordinary meaning of the words used in the speech. The aim of this was to elicit the meaning of the speech to find out what a fair-minded person in Singapore listening to it using his general knowledge and common sense would understand by the words spoken in context and according to the tone and mode of delivery.

(2) After viewing video tapes of the speech, the court found that the defendant was obviously suggesting that the plaintiff had encouraged the suicide of Mr Teh for the improper purpose of covering what, in a full trial, would be a most embarrassing scandal to the government and the plaintiff's political party.

(3) The defendant's defence of fair comment failed because he had not set out any lesser defamatory meaning to which his defence of fair comment would attach. This was because the speech was not capable of bearing any lesser defamatory meaning. In addition, the allegations were factual in character.

(4) As regards the constitutional privilege argument, English and Singapore law never extended privilege to any statements except those made in the course of a legal, social or oral duty. There was nothing in the case law of these countries to suggest that public figures fell within a special category so that anything can be said about them unless the potential plaintiff can prove malice.

(5) The defendant's speech was made to a large number of persons. It alleged that the plaintiff was implicated in the unlawful taking of a human life for a sinister purpose. It was wicked since the government's commission of inquiry had cleared the plaintiff of any wrongdoing. The award of damages must be commensurate with the gravity of the allegations to serve as a full and sufficient vindication. The defendant had made a public apology which was done in a way which made the listener think that the defendant was reaffirming his allegations. The plaintiff had also to pursue the litigation for two years. An award of $260,000 with interest at 6% was therefore granted. An injunction would also be granted against the repetition of the slander.

[*Editorial Note*: The defendant has appealed to the Court of Appeal vide Civil Appeal No 65 of 1990.]

Cases referred to

1 *Lucas-Box* v *News Group Newspapers Ltd* [1986] 1 WLR 147 (refd)
2 *Rubber Improvement Ltd* v *Daily Telegraph Ltd* [1964] AC 234 (follid)
3 *Jones* v *Skelton* [1963] 1 WLR 1362 (refd)
4 *Slim* v *Daily Telegraph Ltd* [1968] 1 All ER 497 (refd)
5 *Sim* v *Stretch* [1936] 2 All ER 1237 (follid)
6 *Control Risks Ltd & Ors* v *New English Library Ltd & Anor* [1989] 3 All ER 577 (refd)
7 *Edgington* v *Fitzmaurice* (1885) 29 Ch D 459 (refd)
8 *New York Times Co* v *Sullivan* (1964) 376 US 254 (not follid)
9 *Indian Express Newspapers (Bombay) Pte Ltd & Ors* v *Union of India & Ors* AIR 1986 SC 515 (refd)
10 *Lingens* v *Austria* (1986) 5 EHRR 407 (refd)
11 *Texas* v *Gregory Lee Johnson* (1989) 57 LW 4770 (refd)
12 *Toogood* v *Spyring* (1834) 1 CM & R 181; 149 ER 1044 (refd)
13 *Adam* v *Ward* 31 TLR 299 (refd)
14 *London Artists Ltd* v *Littler* [1968] 1 WLR 607 (refd)
15 *Adam* v *Ward* [1917] AC 309 (refd)
16 *Blackshaw* v *Lord* [1984] 1 QB 1 (refd)
17 *Lee Kuan Yew* v *Derek Gwyn Davies* [1990] 1 MLJ 390 (refd)
18 *Sutcliffe* v *Pressdram* [1990] 1 All ER 269 (refd)
19 *Cassell & Co Ltd* v *Broome* [1972] AC 1027 (follid)
20 *Lee Kuan Yew* v *Seow Khee Leng* [1989] 1 MLJ 172 (refd)
21 *Smith* v *Harrison* (1856) 1 F & F 565; 175 ER 854 (refd)

Legislation referred to

Constitution of the Republic of Singapore art 14
Constitution of India art 19(1)
Constitution of the United States of America Amendments I, XIV

David Eady QC (*Tan Kok Quan* with him) for the plaintiff.
Donald Martin Thomas QC (*JB Jeyaretnam* with him) for the defendant.

Cur Adv Vult

Lai Kew Chai J: This action for slander arose out of what the defendant had uttered in the course of an electioneering speech made on 26 August 1988 in the Parliamentary general elections of 1988 before a crowd of about 7,000 people at Bedok Town Centre, car park no 6. The trial of this action, which lasted four days, is concerned with the usual, and in this case the most important, issue as to the ordinary and natural meaning of the speech complained of. The second issue is whether the defence of fair comment avails the defendant. The third issue is whether, as the defendant asserted, there is a novel defence of privilege based on art 14(1) of the Constitution of the Republic of Singapore. Fourthly, where the answer of this court to the second issue and/or third issue is in the affirmative, only then will the question arise as to whether the defendant was actuated by malice which would be fatal to the defences of fair comment and privilege. The fifth matter for consideration in this trial is the quantum of damages if the defendant is liable for the slander and, finally, this court has to decide whether in its discretion it will grant the injunction sought.

At the commencement of the trial there was some doubt, having regard to the averments of para 5 of the defence which was later renumbered as para 7 of the amended defence, whether the defendant was relying on the defence of justification. Those averments, followed by certain particulars of facts, are in these terms: 'Further or in the further alternative, in so far as the words used by the defendant consist of allegations of fact, they are true in substance and in fact.' Those averments do not allege that the particulars of facts pleaded apparently by way of justification go to prove the truth of the defamatory meaning of the words as contended by the plaintiff. Nor do they seek to justify any lesser defamatory meaning or meanings which have to be spelt out in accordance with the decision of *Lucas-Box* v *News Group Newspapers Ltd.*[1] If *Lucas-Box*[1] has been followed, the issue or issues would have been defined between the parties and they and this court would have been assisted when it came to deal with this aspect of the case. Inevitably, Mr Eady, learned counsel for the plaintiff, submitted that unless the particulars justify the published words in some defamatory meaning, they were irrelevant and should be struck out. However, Mr Thomas, learned counsel for the defendant, made it clear to this court that the defendant was not pleading justification as a defence and that the particulars listed will be relied upon only in support of the plea of fair comment. In those circumstances, para 7 of the amended defence was allowed to stand so far as they may be relevant to the issue of fair comment.

The parties

The plaintiff was admitted to practise as an advocate and solicitor in August 1951. He has been very active in politics. In November 1954, he became the secretary-

general of the Peoples' Action Party ('PAP') on its foundation and, save for a brief interlude of a month in 1957, has held that office ever since. In March 1955, he became a member of the Legislative Assembly. In the May 1959 general elections, the PAP won a majority and the plaintiff formed the government and became the Prime Minister of Singapore. Since then there has been eight general elections which the PAP won. Throughout this period the plaintiff has remained the Prime Minister.

The defendant is also an advocate and solicitor. He was for a time in the Singapore Legal Service where he rose to become the Registrar of the Supreme Court and the equivalent of the senior district judge in 1963. He went into private practice in 1964. On 27 June 1971 he joined the Workers' Party and on the same day became its secretary-general. He has held that office ever since. He unsuccessfully contested a number of elections between 1972 and 1980. In October 1981 he won the by-election for the Anson seat. In the 1984 general elections he retained the Anson seat with an increased majority. However, he was declared by the Speaker of Parliament to be disqualified from Parliament following a conviction for an offence under the Penal Code.

The factual background

In August 1988, general elections were called. Polling day was scheduled for 3 September 1988. The PAP contested all 81 parliamentary seats in 55 electoral divisions and won all of them save one seat. Two defeated Workers' Party candidates were declared as non-constituency members but one of them, Mr Francis Seow Tiang Siew, was disqualified with effect from 17 December 1988 under art 45(1)(e) of the Constitution of Singapore because he was convicted of five offences and fined $3,000 each for three offences and $5,000 each for two offences. The Workers' Party contested in 20 electoral divisions having a total of 32 seats. The defendant was not himself a candidate because of his disqualification from Parliament. However, he ran the election campaign for the Workers' Party as secretary-general and spoke in about 24 election rallies in support of his party's parliamentary candidates. In response to the plaintiff's emphatic and oft-repeated call for 'high moral and intellectual ground,' the defendant in the election hustings questioned the honesty of the PAP government. In the course of his attack against the claim of the PAP government that it was an honest government, the defendant referred to the suicide of Mr Teh Cheang Wan, the former Minister for National Development. It was submitted on behalf of the plaintiff that in the course of such an attack at the Workers' Party rally on 26 August 1988 at the Bedok Town Centre, car park no 6, the defendant had slandered him. Before I turn to the speech of the defendant in question, I need to set out the context relevant for the purposes of this action.

On 20 November 1986 the Corrupt Practices Investigation Bureau ('CPIB'), which was answerable to the plaintiff as the Prime Minister, learnt for the first time of an allegation that $500,000 had been paid some years earlier to Mr Teh Cheang Wan as bribes. One Liaw Teck Kee was alleged to be the intermediary and he was asked by the CPIB for an interview. Liaw Teck Kee immediately visited Mr Teh Cheang Wan to warn him. On the following day the plaintiff was informed by the CPIB of the allegation of corruption against Mr Teh Cheang Wan. The plaintiff authorized discreet investigations to continue. On 25 November 1986 one Liu Cho Chit on behalf of Mr Teh Cheang Wan offered a bribe to Liaw Teck Kee to induce Liaw Teck Kee not to implicate Mr Teh Cheang Wan. Liu Cho Chit later pleaded guilty to this offence in the district court. Towards the end of November 1986, Mr Teh Cheang Wan was in Jakarta, Indonesia where he attended the eighth meeting of ASEAN Ministers on Agriculture and Forestry. At this time, the plaintiff was asked by the CPIB to authorize open investigations which meant that Mr Teh Cheang Wan and other witnesses would be interrogated by officers of the CPIB. The plaintiff gave the authority. Following the interrogation of Mr Teh Cheang Wan he was instructed on 2 December 1986 by the plaintiff to take leave of absence until 31 December 1986. On 11 December 1986 the investigation papers were referred to the Attorney General as public prosecutor to consider prosecution.

On 13 December 1986 Mr Teh Cheang Wan wrote a letter to the plaintiff to 'bring some relevant points of the investigations' to his attention. In the letter he referred to two allegations put to him by CPIB. The first allegation was that he had assisted a private developer so that two-thirds and not the entire piece of land were acquired by the Ministry of Defence and that he further assisted in facilitating the development of the remaining one-third of the land. The second allegation was that he had assisted in the sale of a piece of state land to another private developer who could after amalgamation with his own land put up a bigger hotel. It was alleged that he had received $800,000 as gratification for being in the two cases. Mr Teh Cheang Wan went on in his letter to explain that he had assisted in the first case because it was morally right to intervene and that the second case was not an uncommon occurrence where the proposed development merited amalgamation. He thought the truth of the matters was that Liaw Teck Kee had taken advantage of his personal relationship with him and that Liaw Teck Kee had pocketed the money paid by the two private developers. He ended the letter in these terms:

> 11 I am completely innocent of any gratification. If I am brought to trial, the very process of it (sic) which will be painful and long, will certainly be the end of me even if I am found innocent. I strongly believe that innocence deserves to be protected.

12 I am extremely sorry that matters have come to this stage where the reputation of the PAP government might be adversely affected. My error has been in wrongly trusting a friend who has made use of me for his own profit. I am willing to accept full responsibility for this. *I would accept any decision which you may want to make.* (The emphasis is added as references to this sentence have to be made later.)

At about 8am on 14 December 1986 Mr Teh Cheang Wan was found dead in his home at 12 Bukit Tunggal Road, Singapore. The autopsy carried out later that day established that death was due to an overdose of Amytal barbiturate.

At 9.15am on 14 December 1986 the security officer of Mr Teh Cheang Wan delivered to the plaintiff a letter which Mr Teh Cheang Wan had addressed to him shortly before his death. The plaintiff knew that this letter had to be turned over to the State Coroner and had duly noted on the envelope 'opened and read 9.15am 14 December 1986, LKY'. In the undated handwritten letter to the plaintiff Mr Teh Cheang Wan stated that he had been feeling very sad and depressed for the two weeks preceding, that he felt responsible for 'this unfortunate incident' and that he should accept full responsibility. He ended the letter by saying: 'As an honourable oriental gentleman, I feel it is only right I should pay the highest penalty for my mistake.'

A coroner's inquest was held on 20 January 1987. Mr Evan Yeo, director of CPIB, gave evidence of the investigations on Mr Teh Cheang Wan and of the referral of the investigation papers to the Attorney General. Mr Teh Cheang Wan's undated letter was produced in court. Professor Chao Tzee Cheng, clinical professor and senior forensic pathologist, Department of Pathology, opined in evidence that the cause of death was 'Amylobarbital poisoning', that Mr Teh Cheang Wan had taken a lethal dosage of 2,000mg of Amytal barbiturate, which was 10 to 20 times the normal dosage and twice the known lethal dosage of 1,000mg. In the light of those evidence the state coroner returned a verdict of suicide.

Following the verdict of the state coroner, the Workers' Party on 21 January 1987 at a press conference called for a Commission of Inquiry to be appointed immediately to inquire into the allegations disclosed at the coroner's inquest that Mr Teh Cheang Wan had received bribes of two sums. At the press conference, the defendant said that he hoped the government would not close the file with the coroner's inquest, that the public should know fully everything concerning the allegations and that it was essential for public confidence in the government that the public be told the whole truth.

On 26 January 1987 the plaintiff as Prime Minister made a statement in Parliament on the suicide. He stated, inter alia, as follows:

(a) The Director of the CPIB, Mr Evan Yeo, had seen me on 21 November on a complaint of corruption against Teh Cheang Wan. I asked that investigation be discreet because once people come to know that the CPIB was investigating so prominent a minister as that for National Development, the news would spread like wildfire. The Ministry of National Development had more opportunities for corrupt practices than any other. A minister's reputation would be put to severe test by an investigation. Such an investigation could not be kept secret. Therefore, once open investigations had started, they would have to go on until all the evidence is uncovered to show either that the complaints are baseless, or that there is enough evidence to submit to the Attorney General for him to place before a court of law for trial and judgment. [Hansard, 26 January 1987, cols 933-934.]

(b) Sir, there is no way a minister can avoid investigations, and a trial if there is evidence to support one. Teh Cheang Wan chose death rather than face a trial on the charges of corruption which the Attorney General had yet to settle. The effectiveness of our system to check and to punish corruption rests, first, on the law against corruption contained in the Prevention of Corruption Act; second, on a vigilant public ready to give information on all suspected corruption; and third, on a CPIB which is scrupulous, thorough, and fearless in its investigations. For this to be so, the CPIB has to receive the full backing of the Prime Minister under whose portfolio it comes. But the strongest deterrent is in a public opinion which censures and condemns corrupt persons, in other words, in attitudes which make corruption so unacceptable that the stigma of corruption cannot be washed away by serving a prison sentence. [Ibid, col 935.]

Dr Arthur Beng Kian Lam (Member of Parliament for Fengshan) asked whether any other persons, in particular, officials of the Ministry of National Development had been implicated in the allegations for which Mr Teh Cheang Wan was being investigated. The plaintiff said:

> The investigations have not disclosed the complicity of any other person in the ministry. There was in the case of the land acquisition an unusualness in procedure. The land having been acquired, an appeal was lodged. It usually takes six months to a year for the appeal to be heard and for it to go before the minister for his decision. In this case, the appeal was never heard, and the minister intervened and gave his decision without an appeal ever being heard. No complicity by any official was involved. It was the minister's personal intervention. Therefore, the officers of the CPIB who conducted this investigation are satisfied that there was no complicity and no aiding and abetting by any official of the ministry or any other permanent secretary or minister or parliamentary secretary. [Ibid, cols 936-937.]

The Workers' Party responded to the ministerial statement of the plaintiff. By a press release dated 27 January 1987 the Workers' Party questioned why the plaintiff as Prime Minister had not decided to hold a public inquiry into the allegations made against one of his ministers. It said there were several questions which had not been answered in the plaintiff's statement to Parliament. The questions were:

(i) What did the Prime Minister do when he received Mr Teh Cheang Wan's letter of 13 December 1986,

which the Prime Minister says he received that morning. Did he respond to Mr Teh's statement in the last sentence that he would accept any decision which the Prime Minister may make?

(ii) The Prime Minister says that he gave Mr Teh leave of absence on 2 December 1986. Why wasn't a public announcement made then?

(iii) Did the Prime Minister enquire from Mr Teh how he was financing the building of his house which the Prime Minister says cost more than $1.5m when Mr Teh told him of his plan to build.

(iv) The Prime Minister has not answered the question as to whether any steps would be taken to recover any sums found to have been received by Mr Teh. The Prime Minister merely contents himself with the statement that there is (no) legal provision for the recovery. Why not?

(v) Where and how did Mr Teh get his supply of the tablets?

(vi) The party is dumbfounded at the Prime Minister's answer that Mr Liaw Teck Kee would not be prosecuted. Why not? Will anyone be prosecuted?

The suicide of Mr Teh Cheang Wan and the allegations of his corrupt practices, not unexpectedly, attracted enormous publicity and debate. At the sitting of Parliament on 4 March 1987, Mr Chiam See Tong (Member of Parliament for Potong Pasir) called for public inquiry to get to the bottom of 'the Teh Cheang Wan affair' and to make recommendations to prevent further corruption in high places. A protracted exchange ensued between the plaintiff and Mr Chiam See Tong. On 26 March 1987, Professor S Jayakumar, the then Second Minister for Law, announced that the government had agreed to a public inquiry and that the President had on 25 March 1987 appointed a Commission of Inquiry consisting of three members. The terms of reference of the Commission were as follows:

(1) To enquire whether —

(a) the Corrupt Practices Investigation Bureau did all that was necessary to uncover all the acts of corruption or criminal wrongdoing of the late Mr Teh Cheang Wan in investigating complaints of or leads to acts of corruption by the late Mr Teh Cheang Wan as Minister for National Development;

(b) the Corrupt Practices Investigation Bureau was thorough in their investigations before concluding that there was no involvement by any other minister, parliamentary secretary, or government officer in these acts of corruption or other criminal wrongdoing;

(c) there has been any attempt to overlook, to conceal or to cover up any information concerning corruption or criminal wrongdoing.

(2) To investigate —

(a) into the circumstances which made it possible for the former Minister for National Development to accept the two $400,000 bribes;

(b) whether other persons were involved or implicated in relation to the said two bribes or other bribes, if any;

(c) the system used by the Ministry of National Development in —

(i) acquisition/alienation of land;

(ii) receiving and accepting of tenders; and

(iii) the operations of its and related companies.

(3) If the Commission finds on the evidence that —

(a) in respect of reference 2(b) there were wrongdoings, then it shall refer the person or persons involved or implicated to the appropriate authorities;

(b) there are shortcomings in the system used by MND and/or any of its or related companies, it shall receive proposals and make recommendations for their improvements and to prevent further corruption.

On 18 December 1987 the Commission of Inquiry submitted its report to the President of the Republic of Singapore. Its findings on the terms of reference were:

The first term of reference

1 Having considered the evidence, we find that:

(a) the Corrupt Practices Investigation Bureau did all that was necessary to uncover all the acts of corruption or criminal wrongdoing of the late Mr Teh Cheang Wan in investigating complaints of or leads to acts of corruption by the late Mr Teh Cheang Wan as Minister for National Development;

(b) the Corrupt Practices Investigation Bureau was thorough in their investigations before concluding that there was no involvement by any other minister, parliamentary secretary, or government officer in these acts of corruption or other criminal wrongdoing;

(c) there has been no attempt to overlook, to conceal or to cover up any information concerning corruption or criminal wrongdoing.

The second and third terms of reference

2 Although Mr Chiam failed to lead evidence on the second term of reference, we are of the view that the evidence adduced before the Commission in respect of the first term of reference is sufficient to enable us to make findings on paragraphs (a) and (b) of the second term of reference. We propose to do so.

3 In respect of paragraph (a), we find, on the evidence, that:

Teh Cheang Wan was able to accept bribes by abusing his position as the Minister for National Development to do favours for Hock Tat Development Pte Ltd and Ho Yeow Koon.

4 In respect of paragraph (b), we also find, on the evidence, that:

with the exception of those persons already identified at the inquiry, no other person was involved or implicated in relation to the two bribes and that there were no other bribes.

5 As Mr Chiam failed to lead evidence on paragraph (c) of the second term of reference, we are unable to make any finding on the subject matter of the inquiry under this paragraph. In consequence, no finding is required in respect of the third term of reference.

The speech

I now turn to the speech in English made by the defendant which according to the plaintiff constituted a serious and

grave slander against him. That speech was fully recorded on video cassette tapes which were by consent produced in court and marked as exhs P1 and P1A. The video cassette tapes were by consent played out and viewed by me in open court for about 40 minutes during the opening of the case for the plaintiff. On the invitation of both learned counsel I viewed the tapes again after I had concluded the hearing of the case and had reserved judgment. The full text of the defendant's speech appeared in plaintiff's bundle no 1 at pp 259 to 265. The speech complained of appeared at pp 261 and 262. The authenticity and accuracy of the text of the speech were accepted by the defendant. Its publication was also admitted. The defendant at the beginning of his speech said that he had 'a number of serious things to say' that night. He further said that at the Workers' Party rally at Fullerton Square the previous night, he had posed a number of questions to government leaders. He took up the plaintiff's statement made at the National Day Rally that the government was an honest government and that voters should vote for an honest government. He then referred to specific instances and asked whether the government was honest.

That part of the defendant's speech of which complaint is made is in the following terms:

> Now the (pause) one of the other questions that I asked related to our late minister Mr Teh Cheang Wan (applause), the minister of whom our beloved Prime Minister said where can we get another Teh Cheang Wan? (Applause) What I asked at the Fullerton Square Rally yesterday was this. It was revealed at the coroner's inquest, and this is another thing, why did we have to wait till the coroner's inquest to be hold that Teh Cheang Wan had committed suicide? It was revealed at the coroner's inquest that Teh Cheang Wan committed suicide by taking poison. Well, as everybody in Singapore knows you can't buy poison over the counter. (Applause) Under the Drugs Act or under the Poisons Act, a register is kept of all the chemists or pharmacists that deal with this drug, this poison and they have to record the persons to whom the poison was supplied and the name of the doctor who prescribed the poison. My question was why hasn't the government conducted any inquiry to find out how Mr Teh Cheang Wan came by this poison, by these drugs. (Applause) Shouldn't the people be told? I said it was essential for a government to tell the truth and nothing but the whole truth and not to hide anything. (Applause) Well, to this time there has been no response on that. Well I hope before polling day we will be told how Mr Teh Cheang Wan came by that poison. But I have one other question which I didn't ask at Fullerton Square but I am going to ask tonight. (Applause) You may recall that it was reported in the *Straits Times* and that Teh Cheang Wan wrote to the Prime Minister, I think a day before his death, and I think the letter was also published. And if my memory serves me right and I think it does, Mr Teh Cheang Wan ended that letter by saying I am very sorry I will do as you advise. (Applause) My question to our Prime Minister from here tonight is this. Did he respond to that letter from Mr Teh Cheang Wan? And if he did respond what was his response? (Applause) I was not in Parliament then, but we said in our paper, the Hammer, that ministers must not be allowed to escape responsibility. And the Cabinet bore the responsibility for the whole thing. And I said it was wrong to allow Mr Teh Cheang Wan to get away from answering this question and so we must know how is it that he came by his death.
>
> So I hope we will have an answer to this question from the Prime Minister before polling day. (Applause)

On 31 August 1988 solicitors for the plaintiff wrote to the defendant and referred to the speech complained of in extenso. It was common ground that they had by mistake quoted the word 'advised' in the past tense when it should have been 'advise' in the present tense. The solicitors contended that by those statements the defendant had imputed that the plaintiff was unfit for the office of Prime Minister in that (i) he advised Mr Teh Cheang Wan, one of his ministers, to commit suicide in order that Mr Teh could avoid investigations into his conduct and thereby escape responsibility; and (ii) he was guilty of criminal misconduct in that he abetted Mr Teh's suicide. The plaintiff's solicitors stated in the letter that the statements were completely untrue and accordingly constituted a grave slander upon the plaintiff. The letter went on to require the defendant to:

(1) publish on or before 2 September 1988 and at your expense an apology in terms of the draft now enclosed. The apology is to be published with appropriate prominence in the national Chinese, English, Malay and Tamil newspapers;
(2) read the said apology at the next Workers' Party rally following delivery of this letter and, in any event, not later than 1 September 1988;
(3) forthwith undertake in writing that you will not repeat the same or similar statements concerning him;
(4) compensate him by way of damages; and
(5) indemnify him in respect of the costs which he will have incurred in this matter.

The draft apology was in the following terms:

> Apology
>
> I, JB Jeyaretnam, hereby unreservedly withdraw all allegations made by me, during the course of a speech at a rally of the Workers' Party held on 26 August 1988, concerning the character and conduct of the Prime Minister, Mr Lee Kuan Yew which I admit meant, and were intended to mean, that Mr Lee advised Mr Teh Cheang Wan, one of his ministers, to commit suicide in order that Mr Teh could avoid investigations into his conduct and thereby escape responsibility and that Mr Lee is guilty of criminal misconduct in that he abetted Mr Teh's suicide.
>
> I acknowledge that there was no truth whatsoever in any of the statements I made, and I sincerely apologize to the Prime Minister for having uttered them.

The defendant replied on the following day in the following terms:

> I refer to your letter of 31 August 1988.
>
> I do not admit the accuracy of your client's transcript of my speech at Bedok. I shall require your client to prove strictly all the words he alleges I uttered at the rally which he says were defamatory of him.

I deny that my speech or any part of it bore the imputation that you client has chosen to put on my speech.

All I may have done was to exercise a fundamental constitutional right, namely, a fundamental constitutional right of a citizen in relation to a matter of public importance to ask another citizen, who may possibly hold relevant information or have the power to ensure that by a public inquiry relevant information is discovered, to reveal any such information held by him or to order a public inquiry to discover for the public all information which may touch upon the matter and which the public have a right to know.

No suggestion of misconduct on the part of your client was ever made by me.

The defendant sent a copy of his reply to the press. The *Straits Times* reported it on Friday, 2 September 1988 under the caption 'Jeya denies speech was slanderous'. It was reported that the defendant did not make any apology at the rallies he had addressed on Wednesday and that he said in the letter that he had made no suggestion of misconduct on the plaintiff's part.

On the night of the eve of polling day, the defendant addressed a Workers' Party rally at a car park in Bukit Merah View. Two audio cassette tapes of that speech were duly proved in court and admitted as exhs P2 and P2A. The relevant parts of that speech are reproduced below:

4 Now, the prime Minister is reported, you know, I got home last night, after addressing three rallies, and this was on TV. A whole hour, I think was devoted to showing the PAP rally at Fullerton Square. (Shouts and applause) So I watched, you know, for a little while, and I heard them say the things they were saying about me and about Mr Francis Seow. And, you know, looking at them on TV, all you could see on their faces was, you know, a sort of whining and griping. (Applause) I thought to myself, they need a good dose of laxative. (Shouts) But the Prime Minister doesn't like me asking questions. (Shouts and applause) He has, he has threatened to sue me because I asked questions. (Shouts and applause) But he must, he must know by now that Jeyaretnam is not to be frightened. (Shouts and applause) He must know that Jeyaretnam will not be intimidated. (Shouts of 'No') He hasn't learnt that lesson. (Shouts of 'No') Now I, I have more questions for him tonight. (Shouts) Now, this is what is reported in the government paper as having said. Now can I read what is reported? Please can you please listen. He says, stay on high moral and intellectual ground and he says, he says the PAP has stayed in power by never, and he means, and he said I mean literally never, breaking faith with you, that is the people. That is important. We are not making this speech for Saturday. Here the Prime Minister says we've never broken faith with the people. Now, I want to ask him three questions on this now and I hope he will answer this sometime.

...

9 Now, the next question, one of the next questions that I asked was, why was there no investigation or inquiry into how our late minister Mr Teh Cheang Wan (shouts), how he got the supply of Amytal, you know, the drug which killed him. I, I said there should have been an investigation and I said why wasn't there an inquiry into why, how he got that. Well, we haven't had an answer to that question yet and I'm asking that question again tonight. Like I said, I know Mr Lee, our Prime Minister, doesn't like me asking questions but I was in Parliament, I'm sure you must have seen that on TV. (Shouts) Now, they disliked me because I was asking too many questions. (Laughter) You know, I'll tell you something that I miss and that is, having this, you know, duelling with the Prime Minister (shouts), because there was nobody else in Parliament who could duel with me. (Shouts and applause) So they, you know, the great man came down ... (garbled) to start duelling with me and I enjoyed every minute of it. (Shouts and applause) But somebody told me that he looked haggard and worn when he was duelling with me and now he's a bit more relaxed because I'm no longer in Parliament.

In this context, I should now refer to the knowledge of the defendant regarding a defamation action which the plaintiff had commenced on 27 March 1987 in the High Court of Kuala Lumpur, Malaysia against the Star Publications (Malaysia) Bhd and its editor-in-chief. In that action the plaintiff was alleging that those defendants had falsely and maliciously published or caused to be written two articles in *The Star* newspaper of 1 February 1987 and 22 February 1987. The plaintiff alleged in his statement of claim in the Malaysian action that the articles meant, inter alia, (a) that he had persuaded Mr Teh Cheang Wan to commit suicide and had provided him with the means to do so; and (b) that he had ensured that there was no investigation to search for the source of the Amytal used by Mr Teh Cheang Wan to commit suicide. That action is pending trial in Malaysia and I must make it clear that I am not expressing any opinion whatsoever on those imputations as alleged. The defendant, however, accepted in his cross-examination that he knew, as most people in Singapore knew, that the plaintiff had instituted those proceedings in Malaysia over very similar allegations. The defendant also accepted in cross-examination that he knew that the plaintiff would challenge any suggestion of any cover up or impropriety on his part over the suicide of Mr Teh Cheang Wan.

The natural and ordinary meaning

Central in this action is the meaning of the speech complained of. The meaning to be elicited from it which this court as a decider of fact has to ascertain involves a process of construction which, in some ways, is peculiar to the law of defamation. So far as it is a question of fact, it does not involve the acuity of a lawyer in the construction of legal or commercial documents nor the imperviousness of a simpleton. The aim and object of the whole process of eliciting the meaning of the speech is to find out what an ordinary fair-minded person in Singapore who was in the audience that night and using his general knowledge and commonsense would understand by the words spoken in the context and according to the tone and mode of delivery. The correct approach received a great deal of attention of the House of Lords in *Rubber Improvement Ltd* v *Daily Telegraph Ltd*[2] where Lord Reid said at p 258 as follows:

> There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of general knowledge and experience of worldly affairs ... What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning.

The observations about inferences echoed what was said by Lord Morris of Borth-y-Gest in *Jones* v *Skelton*[3] at p 1370.

It may be worth recalling what Lord Devlin had metaphorically said in *Rubber Improvement Ltd* v *Daily Telegraph Ltd*[2] at p 285:

> A man who wants to talk at large about smoke may have to pick his words very carefully if he wants to exclude the suggestion that there is also a fire: but it can be done.

It was agreed by counsel for both parties that the sense in which the words was intended by a defendant is irrelevant and that the sense in which the words was understood by a plaintiff is also irrelevant. It was further agreed that a minute linguistic analysis of every phrase used is unlikely to reflect the impression actually formed by those who heard the words spoken by the defendant at Bedok Town Centre car park no 6 on 26 August 1988: see *Slim* v *Daily Telegraph Ltd*[4] at p 504A-B per Diplock LJ (as he then was).

If the speech complained of does not bear the meaning asserted by the plaintiff in his statement of claim his claims must completely fail and the other issues raised in this trial would not require any further consideration. On the other hand, if the speech bears the meaning as claimed by the plaintiff, it is abundantly clear that applying the test of Lord Atkin set out in *Sim* v *Stretch*[5] at p 1240 it will be defamatory of the plaintiff. However, I will have to consider the other issues which I had mentioned at the beginning of this judgment.

By para 4 of the statement of claim the plaintiff is asserting that the speech meant and was understood to mean that he was guilty of dishonourable conduct and/or criminal conduct in the discharge of his office as Prime Minister of Singapore in that:

(i) he had advised Mr Teh Cheang Wan ('Mr Teh') to commit suicide and/or when he knew that Mr Teh would or might commit suicide took no action to prevent Mr Teh from committing suicide, in order to avoid a full investigation into allegations of corruption against Mr Teh which investigation would have resulted in findings to the discredit or embarrassment of the plaintiff as Prime Minister and leader of the People's Action Party and of the government of Singapore;

(ii) he has failed to order an inquiry into how Mr Teh obtained the poison with which he committed suicide because the plaintiff had advised Mr Teh to commit suicide and/or when he knew that Mr Teh would or might commit suicide took no action to prevent Mr Teh from committing suicide in order to avoid a full investigation into allegations of corruption against Mr Teh which investigation would have resulted in findings to the discredit or embarrassment of the plaintiff as Prime Minister and leader of the Peoples' Action Party and of the government of Singapore.

By para 4A of the statement of claim, the plaintiff pleaded innuendo as an alternative cause of action. Before me, however, Mr Thomas conceded that it was a matter of general knowledge in Singapore in August 1988 that Mr Teh Cheang Wan had been accused of two charges of corruption shortly before his death. I was therefore asked by both counsel to look at the natural and ordinary meaning of the speech in the light of the general knowledge mentioned. Having pointed out the general knowledge as part of the context to find out the meaning of the speech, Mr Eady made the following submissions:

(a) He observed that from the words themselves, in the context of an electoral attack on the plaintiff, it was difficult to see what point the words could have had except to accuse him of a 'cover-up'. The defendant, as he made plain at the beginning of the speech, was attacking the claims of the PAP government as an honest government; he returned to the same theme on 2 September 1988.

(b) By saying that it was 'essential for a government ... not to hide anything' in the context of the plaintiff not revealing how Mr Teh Cheang Wan came by the poison, the defendant was alleging that the plaintiff kept it quiet because it would discredit him if the truth came out. The listeners could not possibly conclude that the information was being withheld for some innocent reason, seeing that the whole object of the speech was to damage the plaintiff's credibility.

(c) The matter was taken further by the defendant's misquote of the 13 December letter of Mr Teh Chang Wan. The defendant attributed to Mr Teh Cheang Wan the words 'I will do as you advise'. He highlighted the fact that the letter was written the day before Mr Teh Cheang Wan's death and then asked the question 'What reply (ie advice) did the plaintiff give?'. The implication was irresistible for listeners that the plaintiff not only 'advised' Mr Teh Cheang Wan to commit suicide but also ensured that he was given the means to do it. The letter in question made no reference to any 'advice' — neither to advice being solicited nor to advice already given. The mistake in using the word 'advised' in the letter before action and

in the statement of claim did not have any material effect on the construction of the speech.

(d) The defendant asserted that it was wrong to 'allow' Mr Teh Cheang Wan to get away from answering his questions. He was clearly asserting that the plaintiff had permitted Mr Teh Cheang Wan to escape the CPIB investigations by suicide.

(e) The speech stood in contrast to legitimate questions asked in the Workers' Party press release issued on 27 January 1987 by the defendant as secretary general.

Mr Thomas made the following submissions on behalf of the defendant:

(a) The defendant's question about the source of the poison merely repeated question no 5 of the 27 January 1987 press release to which there had been no answer and in respect of that question the plaintiff had made no complaint.

(b) The defendant's question about the response, if any, to Mr Teh Cheang Wan's letter was again a repetition of question no 1 raised in the press release and in several issues of 'Hammer'. It was only on the third day of this trial that it emerged that the plaintiff did not think that any enquiry into the source of the poison was necessary and that he had not responded to Mr Teh Cheang Wan because he believed and practised the 'hands off' policy.

(c) The defendant's speech must be considered in the context of an election where the PAP had set honesty of its government as an issue and where the defendant was attacking the government's honesty in the broad sense that it did not keep faith with the people, in contrast to money corruption.

I have considered these submissions. I have viewed the video tapes and seen and heard what Mr Eady described as the 'pregnant pauses' and 'waits for effect'. I entirely accept the force of the submissions of Mr Eady. Inspite of the forensic efforts of Mr Thomas, it came through to me after listening to the speech that what the defendant was driving at was exactly what has been pleaded in para 4 of the statement of claim. The defendant was obviously suggesting that the plaintiff had encouraged or countenanced the suicide for the improper purpose of covering up what, in a full trial, would have been a scandal most embarrassing to the government and the PAP. That was the clear impression I formed after listening to the speech. It was confirmed by the second viewing of the video cassettes.

Fair comment

The defendant would have a complete defence in this action if he proved that the speech was made by him as fair comment on a matter of public importance. It is accepted that in the law of defamation fair comment is a defence of great importance and wide scope. To invoke this defence the defendant has to prove the following four elements: (i) the words complained of are comment, although they may consist of or include inferences of fact; (ii) the comment is on a matter of public interest; (iii) the comment is based on facts; and (iv) the comment is one which a fair-minded person can honestly make on the facts proved.

It is now necessary to recite the averments of the defendant in relation to the defence of fair comment. They were set out in paras 6 and 7 in the amended defence. Paragraph 6 reads as follows:

> Further or in the alternative, the words used by the defendant were fair comment, made in good faith and without malice upon a matter of public interest, namely, the need in Singapore for frank and open government.
>
> Particulars
>
> (a) The defendant was engaged in criticizing the government in the course of an election campaign. The defendant's remarks were directed to the need for frank and open government in a number of important areas. Open government is an issue of public importance which the defendant has addressed throughout his political career including in a speech at an election rally at Fullerton Square on Thursday 25 August 1988.
>
> (b) The suicide of a government minister, one Teh Cheang Wan, following allegations against him of corruption was a matter of outstanding public interest.
>
> (c) It was a proper matter for public concern that the deceased had taken poison whilst under investigation for corruption.
>
> (d) Similarly, the public interest required that the plaintiff should say whether he responded at all, and if he did, what his response was, to a letter from the deceased written to the plaintiff on the day before his death and received by the plaintiff the same day in which the deceased said he was willing to accept full responsibility and that he 'would accept any decision which you (the plaintiff) may want to make'.
>
> (e) In the premises, the defendant was entitled to comment by way of question:
>
> (i) why the government had failed to conduct any public inquiry as to how the deceased had obtained access to poison; and
>
> (ii) what response, if any, the plaintiff had made to the said letter.
>
> (f) Further, the defendant was entitled to comment that ministers should not be allowed to escape responsibility to answer for any misconduct and that the Cabinet bore collective responsibility for the whole matter.
>
> (g) Further, the defendant was entitled to call for a full public inquiry into the circumstances of the death of the deceased.

Paragraph 7 reads as follows:

> Further or in the further alternative, in so far as the words used by the defendant consist of allegations of fact, they are true in substance and in fact.
>
> Particulars
>
> (a) The coroner's inquest revealed that the said deceased committed suicide by taking poison.

(b) Under the Poisons Act (Cap 234) statutory particulars are required to be maintained of all poisons supplied to any person.
(c) The government have not ordered a public inquiry as to how the deceased obtained access to the poison.
(d) A letter was written by the deceased to the plaintiff a day before the deceased died and received by the plaintiff the same day in which the deceased said 'he would accept any decision which you (the plaintiff) may wish to make'.
(e) The plaintiff has not revealed whether he made any response to the said letter or what his response, if any, was.

It will be seen that the defendant had failed to state the defamatory meaning against which the defence of fair comment would protect him. He did not accept that his speech bore the defamatory meaning as contended by the plaintiff. But he had not set out any lesser defamatory meaning to which his defence of fair comment would attach as he was unquestionably required to do since the decision of *Control Risks Ltd & Ors* v *New English Library Ltd & Anor*[6] which extended the *Lucas-Box*[1] principle of pleading governing the defence of justification to the defence of fair comment. The reason why the defendant had failed to do so was, in my view, identified by Mr Eady who correctly observed that the truth of the matter was that the speech was not capable of any lesser defamatory meaning. Either they bore the defamatory meaning which I have found as a fact, as the plaintiff asserted, or they bore a meaning which was not defamatory at all. Mr Eady said that there was no half-way house which could be excused by the defence of fair comment.

I have found that the speech of the defendant contained the imputations that the plaintiff had encouraged, or failed to prevent, the suicide of Mr Teh Cheang Wan in order to cover up wrongdoing. I accept Mr Eady's submission that those imputations were factual in character, both in relation to the allegations about the plaintiff's conduct and those relating to his state of mind. As to the later, Bowen LJ said in *Edgington* v *Fitzmaurice*[7] at p 483: 'The state of a man's mind is as much a fact as the state of his digestion.' It therefore inevitably followed that those allegations would be susceptible to the defence of justification (which was not raised in this action) and not the defence of fair comment. In relation to these submissions, I must state that Mr Thomas in his closing submissions very properly and candidly admitted that those imputations were not and could not be comment but that they were of a factual character. Accordingly, the defendant had failed to prove element (i) above and, in the circumstances, it would not be necessary to deal with elements (ii) to (iv) as set out above.

'Constitutional privilege'

By way of a novel defence, it was submitted on behalf of the defendant that in view of art 14 of the Constitution of Singapore there is in the law of defamation of Singapore a form of 'constitutional' privilege whereby a defendant who unwittingly defamed a politician or a public figure would not be liable, unless the plaintiff proved actual malice. Under this doctrine, which was first developed in the United States, even misstatements of facts about public officials, candidates for office and public figures would not be actionable unless made with knowledge that the statements were false or the defendant was reckless as to their truth. This principle was first laid down by the Supreme Court of the United Sates of America in the case of *New York Times Co* v *Sullivan*[8] and it has often been referred to as the *New York Times* rule. It should not be difficult to see that this rule is analogous in a sense to the traditional common law defence of fair comment and that as a matter of policy it prefers the principle that debate on public issues and on the conduct of public officials or of public figures should be uninhibited, robust and wide open than the principle that the rights of individuals (who may be public personalities), including the protection of reputation, should be respected. As a matter of pleadings, the defendant put the submission in the following terms:

> 4 ... The defendant merely asked questions seeking information on and concerning a matter of public interest from the plaintiff in his capacity as Prime Minister and as representing the government on the basis of facts which are indisputable and which are particularized hereunder.
>
> Particulars
>
> (i) The late minister Teh Cheang Wan was a member of the Cabinet of which the plaintiff is and was the head and died of an overdose of poison.
> (ii) The availability of the said poison to individuals is controlled and regulated by law.
> (iii) It is possible by an inquiry and investigation to discover how the said Teh Cheang Wan came by the poison.
> (iv) The government of which the plaintiff is the head has and had the power to order an inquiry and investigation into how the said Teh Cheang Wan obtained the poison and to release the information to the public.
> (v) The public has not been informed of any such inquiry or investigation and its results.
> (vi) The plaintiff received a letter from the late Teh Cheang Wan a day before his death in which the said Teh wrote:
>
> 'I am willing to accept full responsibility for this. I would accept any decision which you may want to make.'
>
> (vii) The plaintiff has not revealed to the public whether he responded to the said letter.
> (viii) The plaintiff has not revealed to the public what he said or wrote to the said Teh Cheang Wan if he did respond to the said letter.
>
> 5 In the premises, the defendant was exercising the constitutional liberty of free speech guaranteed by art 14(1) and (2) of the Constitution of the Republic of Singapore in good faith and without malice.
>
> Particulars
>
> (a) The right to information is implicit in the 'right to freedom of speech and expression' guaranteed by the said article.

(b) The right arises in relation to matters of public concern.
(c) The suicide of the said minister, following allegations against him of corruption was a matter of outstanding public concern.
(d) The defendant was entitled to enquire of the plaintiff in his capacity as Prime Minister in relation to the factual matters set out under para 4 (particulars) above.
(e) The said factual matters were neither false, nor made with reckless disregard for the truth, nor were the words complained of uttered with malice.

The defendant has at no time suggested, nor does he now suggest, that the plaintiff had anything to do with the death by suicide of the said minister, nor has the defendant attributed any role to anyone in the matter. The defendant will refer at the hearing to the terms of his letter dated 1 September 1988 and reported in *The Straits Times* dated 2 September 1988.

An analysis of these pleadings will show (a) that the defendant was again disputing the defamatory imputations as he contended that he was merely asking legitimate questions on matters of outstanding public importance; (b) that the defendant repeated his assertion that at all material times he did not suggest that the plaintiff or anyone had anything to do with the suicide; and (c) by implication, if the speech bore the imputations which I have found, as the plaintiff had asserted, then the defendant in any event should be excused from any liability because he had made the imputations again the plaintiff as a public figure without malice within the *New York Times* rule.[8]

I should now elaborate on the submissions of Mr Thomas on what he had described as 'the interesting and unusual topic of constitutional privilege'. He referred to the provisions of art 14 of the Constitution of Singapore which is reproduced below in its entirety with the relevant parts for present purposes emphasized by me:

14(1) *Subject to clauses (2)* and (3) —

(a) *every citizen of Singapore has the right to freedom of speech* and expression;
(b) all citizens of Singapore have the right to assemble peaceably and without arms; and
(c) all citizens of Singapore have the right to form associations.

(2) *Parliament may be law impose* —

(a) *on the rights conferred by paragraph (a) of clause (1), such restrictions as it deems necessary or expedient* in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or *to provide against* contempt of court, *defamation,* or incitement to an offence;
(b) on the right conferred by paragraph (b) of clause (1), such restrictions as it deems necessary or expedient in the interest of the security of Singapore or any part thereof or public order; and
(c) on the right conferred by paragraph (c) of clause (1), such restrictions as it deems necessary or expedient in the interest of the security of Singapore or any part thereof, public order or morality.

(3) Restrictions on the right to form associations conferred by paragraph (c) of clause (1) may also be imposed by any law relating to labour or education.

Mr Thomas then compared art 14 of the Constitution of Singapore with art 19(1) of the Constitution of India and referred to the Indian case of *Indian Express Newspapers (Bombay) Pte Ltd & Ors* v *Union of India & Ors*[9] to make the point that as art 19(1)(a) of the Constitution of India was based on Amendment I of the Constitution of the United States it would be legitimate and proper to refer for guidance to the decisions of the Supreme Court of the United States of America in order to appreciate the true nature, scope and extent of the freedom of speech. Following these preliminary submissions, I was referred to the *New York Times* rule.[8] As I have sufficiently set out the rule I do not think it is necessary to set out the facts of that case. Mr Thomas emphasized the importance of understanding the rationale of the *New York Times* rule[8] and, in deference to his arguments, I set out below para 3(b) of the *United States Supreme Court Reports, October Term 1978,* pp 983-984 as follows:

> The rationale for the court's decision in the *New York Times* case [(1964) 376 US 254] started from the initial premise of the profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open. Since the threat of defamation liability possesses great potential for intrusion on the zone of protected public speech, the court declared that common law defamation principles were incompatible with First Amendment precepts. Thus, the extension of a conditional constitutional privilege to defame as to matters within the realm of public discussion of public affairs, defeasible only upon publication of defamatory falsehoods with 'actual malice', provided freedoms of expression with the breathing space that they need to survive, the court said. In a number of subsequent decisions, the court has likewise acknowledged that the *New York Times* rule seeks to implement the First Amendment policy of maximization of public debate through minimization of the incentives for self-censorship presented by the threat of defamation liability.

Mr Thomas then pointed out that the European Court of Human Rights had in his view adopted a similar approach in the case of *Lingens* v *Austria*[10] in which art 10 of the Convention of Human Rights was considered. Article 10 is in the following terms (the emphasis is added):

> (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> (2) *The exercise of these freedoms,* since it carries with it duties and responsibilities, *may be subject to such formalities, conditions, restrictions or penalties* as are prescribed by law *and are necessary in a democratic society,* in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, *for the protection of the reputation or rights of others,* for preventing the disclosure of information re-

ceived in confidence, or for maintaining the authority and impartiality of the judiciary.

Mr Thomas concluded his submissions on this issue by exhorting this court to develop and incorporate the *New York Times* rule[8] into the law of defamation of Singapore where, unlike England, there is a written Constitution which contains an express guarantee of the freedom of speech.

I am not persuaded by the submissions of Mr Thomas. His arguments based on Amendment I of the Constitution of the United States of America, which was ratified on 15 December 1791 and extended to bind the constituent States of the Union by Amendment XIV which was ratified on 28 July 1869, are untenable for the reasons submitted by Mr Eady. Freedom of speech is in terms of art 14 subject to or restricted by the law of defamation, much like the underlying concepts and constitutional bargain which are expressed by art 10 of the European Convention of Human Rights, and which in terms must be contra-distinguished from Amendments I and XIV which prohibit Congress and the States from promulgating any law restricting freedom of speech and expression. Thus, freedom of expression in the United States is so extensive that in the recent case of *Texas* v *Gregory Lee Johnson*,[11] the Supreme Court by a five-to-four majority ruled that the Texan statute which criminalized the burning and desecration of the flag of the United States (in circumstances where no breach of the peace was likely) was unconstitutional and inconsistent with the Amendment I. I agree that the divergence of public policy between that underlying our art 14 and that underlying Amendment I of the United States could not be clearer. By art 14, the framers of our Constitution had after all deliberate considerations chosen the policy of balancing freedom of speech and expression against certain other individual rights, including not least the protection of reputation. As rightly pointed out by Mr Eady, that balance is sought to be achieved in England and in Singapore by the common law evolving certain well known defences, as modified by statute, for defendants in defamation cases, and all directed to the intent and purpose that freedom of speech must end where the rights of the individual begin. In *Lingens* v *Austria*[10] at para 41, second part, the European Court of Human Rights in terms clearly recognized that the press was bound by legal obligations in relation to the reputation of individuals.

Accordingly, in the law of defamation of Singapore, as in England according to Mr Eady, it has never been suggested that a privilege extends to any statements which are made to the world at large except in the case of a legal, social or moral duty. I should begin by quoting Parke B who correctly stated the law in *Toogood* v *Spyring*[12] at p 193:

> In general, an action lies for the malicious publication of statements which are false in fact, and injurious to the character of another, and the law considers such publication as malicious, *unless it is fairly made by a person in the discharge of some public or private duty whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned.* In such cases the occasion prevents the inference of malice which the law draws from unauthorized communications, and affords a qualified defence depending on the absence of actual malice. *If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society.*

I would next refer to *Adam* v *Ward*,[13] where Buckley LJ in the Court of Appeal correctly stated the principle of common law privilege and which was accepted and applied by Cantley J in *London Artists Ltd* v *Littler*[14] after a comprehensive review of the authorities. Buckley LJ at p 304 stated:

> ... if the matter is matter of public interest and the party who publishes it owes a duty to communicate it to the public, the publication is privileged, and in this sense duty means not a duty as matter of law, but to quote Lord Justice Lindley's words in *Stuart* v *Bell* [7 TLR 502; [1891] 2 QB 341, 350] 'a duty recognized by English people of ordinary intelligence and moral principle but at the same time not a duty enforceable by legal proceedings' ...

The House of Lords in *Adam* v *Ward*[15] accepted the above formulation of Buckley LJ. Lord Atkinson said at p 334:

> A privileged occasion is ... an occasion *where the person who makes a communication has an interest, or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it.* This reciprocity is essential.

In *Blackshaw* v *Lord*[16] the Court of Appeal of England held that common law privilege applies where defamatory information is published in pursuance of a legal, social or moral duty to persons having a corresponding duty or interest to receive it but it stated that it does not cover 'fair information on a matter of public interest' where there is no duty to publish. That decision was followed in Singapore by Thean J in *Lee Kuan Yew* v *Derek Gwyn Davies*[17] at pp 413-414.

Mr Eady also pointed out, and Mr Thomas could not assert otherwise, that there is no case law in England or in Singapore which suggests that 'public figures' fall into a special category so that anything can be said about them unless the potential plaintiff can prove malice.

In my judgment, the *New York Times* rule[8] is not a defence in our law of defamation. I resolutely set my face against the sort of judicial activism advocated by Mr Thomas.

Damages

The defendant did grievously slander the plaintiff. He is not entitled to invoke any defence. He is therefore liable

for the slander and has to pay damages. I have to consider the measure of damages. Generally, damages for a defamation has to be assessed on a compensatory basis for the injury to reputation and not as a punishment for a civil wrongdoing: see *Duncan and Neill on Defamation* (2nd Ed) paras 18.03 and 18.07. That the punitive (ie exemplary) element should generally be excluded in awards for damages was, however, not always in England any part of the judges' direction to juries when assessing damages. It appears that in the 19th century and the greater part of this century it was thought in England that an award of general damages in defamation cases could include an exemplary element if the conduct of the defendant had been so wanton as to warrant it: see *Sutcliffe* v *Pressdram Ltd*[18] at p 287 per Nourse LJ. It is and has been a matter, in any case, for a jury of 12 reasonable men and women as representatives of the public. In England, therefore, damages in defamation cases are 'at large' in the sense that juries decide the amount without being told of any comparable cases, if there are such cases at all in the first place, nor are they told by the trial judges of the upper and lower brackets of those damages. This practice stems from high constitutional considerations that the assessment of damages is exclusively within the province of juries and awards are rarely disturbed on appeal except on exceptional grounds such as that the award could not have reasonably been given by a reasonable tribunal or that the award is irrational: see *Sutcliffe* v *Pressdram Ltd.*[18]

The general rule that damages in defamation cases may be compensatory only has been authoritatively settled by the House of Lords in *Cassell & Co Ltd* v *Broome.*[19] So far as it is relevant to defamation cases, the only exception which warrants exemplary damages is where the defendant, either with knowledge of the tort or recklessly, decides to publish because he has the prospects of gaining more than he would loose in material terms.

Lord Hailsham LC in *Cassell & Co Ltd* v *Broome*[19] stated at p 1071:

> In actions of defamation and in any other actions where damages for loss of reputation are involved, the principle of restitutio in integrum has necessarily an even more highly subjective element. Such actions involve a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge. As Windeyer J well said in *Uren* v *John Fairfax & Sons Pty Ltd* (1967) 117 CLR 118 at 150: 'It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages *because* he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways, as a vindication of the plaintiff to the public, and as consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money.' ... Quite obviously, the award must include factors for injury to the feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology, or the reaffirmation of the truth of the matters complained of, or the malice of the defendant. The bad conduct of the plaintiff himself may also enter into the matter, where he has provoked the libel, or where perhaps he has libelled the defendant in reply. What is awarded is thus a figure which cannot be arrived at by any purely objective computation. This is what is meant when damages in defamation are described as being 'at large.' (Lord Hailsham LC's emphasis.)

In Singapore, there is no jury trial. The assessment of damages is a matter for the trial judge who by training looks at precedents (if available) for comparison or guidance, who appreciates the value of money and the financial implications of an award of damages in the hands of a successful plaintiff, and who will, more importantly in cases such as the present action, duly exclude any punitive element in accordance with *Cassell & Co Ltd* v *Broome*[19] and assess the injury, original or additional, which the slander has caused to the feelings of an injured party.

I should now look at the factors relevant to the assessment of damages. The number of people who heard the slander was about 7,000 who were at a very busy bus interchange and a food centre. The imputations made by the defendant would in the ordinary way spread and would in the ordinary way spread and would 'snowball' by word of mouth in coffee shops and elsewhere. It would be difficult to know how far the poison had spread. I must highlight the serious nature of the slander. The slander alleged that the plaintiff was implicated in the unlawful taking of a human life for a sinister purpose. The allegation that the plaintiff had encouraged or countenanced the suicide for the sinister purpose of a cover-up had grievously wounded the plaintiff 'at the very heart of his credo'. As Mr Eady rightly pointed out, the plaintiff at the National Day Rally was saying after 30 years in office that he and his colleagues had managed to establish an enviable reputation for an honest government and that it was necessary to remain vigilant always to ensure that honest people came into government, putting that 'right at the heart of his credo'. It was wicked after convincing evidence had been produced before the Commission of Inquiry which confirmed his very firm handling of the investigations into the allegations of corrupt practices by Mr Teh Cheang Wan. The plaintiff did not show any favours and had unflinchingly set his face against corruption when the natural and emotional impulse of lesser leaders in power might have been to protect a ministerial colleague. In my view, a fair-minded person would be horrified on hearing the slander and would react with a great deal of indignation against the grievous injury inflicted on the plaintiff. I am satisfied that the defendant's motive in bearing 'false witness' against the plaintiff was to hit him below the belt at the general elections. Any

award must provide the plaintiff with an adequate solatium. In view of the gravity of the slander, I have additionally to bear in mind that the award of damages, albeit compensatory, must be commensurate with the gravity of the allegations if it is to serve as a full and sufficient vindication. In other words, the plaintiff must be able to point to the award of damages in this case and say 'I was awarded $x by the judge to show that I was untruthfully accused of encouraging or countenancing Mr Teh Cheang Wan's suicide for the purpose of a cover-up.' The element of vindication in this case, in my view, is important but that is not to say that the element of vindication should constitute a separate head of damages.

The defendant failed to correct or apologize for the imputations. In *Lee Kuan Yew* v *Seow Khee Leng*,[20] the defendant did apologize by reading out the agreed terms of the apology at the next election rally. However, the accord reached in that case was not satisfied in respect of a material term as the defendant there went on to qualify the apology after having read it. For the slander which was serious and by reason of his subsequent aggravating conduct 'at every turn' as chronicled by Chua J, he was ordered to pay $250,000 as damages. For the slander uttered by him at the same election rally against other plaintiffs, Mr Seow Khee Leng was further ordered in a companion suit to pay those plaintiffs another sum of $250,000 as damages.

In my view, the plaintiff suffered increased hurt by the speech made defiantly by the defendant on 2 September 1988. I have reproduced that speech earlier in this judgment. I am satisfied that anyone who was present at the Bukit Merah View car park and heard the defendant's speech on 2 September 1988, far from thinking that the defendant was acknowledging that the plaintiff had not been implicated in the suicide, would think that the defendant was reaffirming the allegations made by him earlier. I also bear in mind the fact that the plaintiff has had to pursue this litigation for the last two years and face the defence of fair comment.

Mr Thomas made several submissions in mitigation of the damages. First, the imputations did not have the slightest effect on the plaintiff's success at the general elections; the plaintiff's reputation had clearly not suffered. I accept that the imputations did not affect the plaintiff's chances at the general elections but the slander did have an adverse effect on his position, standing and reputation and such harm should be expiated by an appropriate award. On the other hand, I agree that it was a slander, albeit very grave, uttered in the heat of the hustings. Secondly, the plaintiff according to Mr Thomas was not really hurt in his feelings because he counter-attacked and took every opportunity to broadcast his intention to sue the defendant and that in the process the plaintiff had himself made the slander louder and more extensively known through the English and Chinese media. I find that the plaintiff was deeply hurt in his feelings and was in fact outraged by the slander. In this regard, I accept the submission of Mr Eady that the plaintiff took these steps, as the plaintiff had said in evidence, to minimize the damage that could have been done to his personal and well-known credo for honesty and to the electoral prospects of his party. However, I do agree with Mr Thomas that the plaintiff's robust and calculated electioneering response before polling day did reduce the harm to the plaintiff's reputation and I must make an allowance for this fact. Thirdly, it was said that the defendant had inadvertently made the imputations and that, according to *Smith* v *Harrison*,[21] 'small damages would suffice'. In my judgment the imputations were not made inadvertently; the defendant had intended to make the imputations. He resurrected the matter inspite of the findings of the coroner's inquest and of the Commission of Inquiry. Further, in early 1987 he knew that the plaintiff had commenced proceedings in Malaysia against a newspaper and its editor for what the plaintiff complained were imputations of a similar nature. Inspite of this knowledge the defendant chose to wait one and a half years to raise the matter again and uttered the slander. He was up to no good when he built up the aspersions in the speech and then said that Mr Teh Cheang Wan had written to the plaintiff the day before the suicide saying: 'I will do as you advise.' He then paused for the effect on the audience. I totally reject his claim that he was merely asking questions on matters of public importance and exercising his freedom of speech. Finally, Mr Thomas referred to *Lee Kuan Yew* v *Derek Gwyn Davies*[17] to make the points that the two libels in that case were circulated in the Far East, if not worldwide, and that the subsequent conduct of the defendants in that case and that of counsel in cross-examination had caused further hurt to the feelings of the plaintiff. Mr Thomas suggested that the award of $230,000 was made by reason of those matters which made that case much more serious than the present case. Each defamation case is different. In my view, it cannot be gainsaid that the slander uttered by the defendant in this case was indeed very grave.

In my judgment the fair and reasonable sum as damages for the plaintiff is $260,000. I accordingly enter judgment for him in that sum together with interest at the rate of 6% from 1 September 1988 to the date hereof. In the exercise of my discretion I also grant an injunction against any repetition of the slander or of similar imputations. I also order the defendant to pay the costs of these proceedings to the plaintiff and, in this regard, I would certify for two counsel.

Order accordingly.

Solicitors: *Lee & Lee; JB Jeyaretnam & Co.*

Reported by *Terence Tan Bian Chye*